

COPY

FILED

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10 Attorneys for Defendant MIDLAND
11 CREDIT MANAGEMENT, INC.

2013 NOV 27 PM 12: 09

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

BY: _____

12 UNITED STATES DISTRICT COURT

13 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

14 **FD CV 13 - 02186 JGB** SPX

15 CHARLEEN SMITH,

16 Plaintiff,

17 v.

18 MIDLAND CREDIT
19 MANAGEMENT, INC.; and
20 DOES 1 to 20, INCLUSIVE,

21 Defendant.

CASE NO.

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. § 1441(a)**

State Court Complaint Filed: 10/18/13

22 TO THE CLERK OF THE COURT:

23 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441(a) and 1331,
24 Defendant Midland Credit Management, Inc. ("Midland") hereby removes this
25 action from the Superior Court of the State of California for the County of San
26 Bernardino, Case No. CIVDS 1312719 (the "State Case") to the United States
27 District Court for the Central District of California, Eastern Division. The grounds
28 for this removal are:

FACTUAL SUMMARY

1. On October 18, 2013, plaintiff Charleen Smith commenced the State
Case alleging violations of the federal Fair Debt Collection Practices Act (15 U.S.C.

1 § 1692 *et seq.*) and the Rosenthal Fair Debt Collection Practices Act (Cal. Civ. Code
2 § 1788 *et seq.*).

3 2. Midland was served with the summons and complaint on October 29,
4 2013.

5 3. This notice is therefore timely pursuant to 28 U.S.C. § 1446(b) because
6 it is being filed within thirty days after service of the complaint.

7 **JURISDICTION**

8 4. Removal is proper pursuant to 28 U.S.C. § 1441(a), which entitles a
9 defendant to remove “any civil action brought in a State court of which the district
10 courts of the United States have original jurisdiction,” and 28 U.S.C. § 1331, which
11 gives district courts “original jurisdiction of all civil actions arising under the
12 Constitution, laws, or treaties of the United States.” The district court has
13 supplemental jurisdiction over the alleged state law claim because it is so related to
14 the claim over which the district court has original jurisdiction that it “form[s] part
15 of the same case or controversy.” 28 U.S.C. § 1367(a).

16 5. Pursuant to 28 U.S.C. § 1446(a), Midland attaches as Exhibits 1 and 2 a
17 copy of all process, pleadings, and orders served upon defendant in the State Court
18 action.

19 DATED: November 27, 2013

SOLOMON WARD SEIDENWURM &
SMITH, LLP

20
21 By: 

22 THOMAS F. LANDERS
23 LEAH S. STRICKLAND
24 Attorneys for MIDLAND CREDIT
25 MANAGEMENT, INC.
26
27
28

INDEX TO EXHIBITS

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Pages

Exhibit 1: State Court Action	3-20
Exhibit 2: State Court Answer	21-26

Exhibit 1

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

MIDLAND CREDIT MANAGEMENT, INC.; and DOES 1 to 20,
INCLUSIVE

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

CHARLEEN SMITH

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 18 2013

BY Jennifer Medina
JENNIFER MEDINA, DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. (AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.)

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of San Bernardino
303 W. Third St
San Bernardino, CA 92415

CASE NUMBER:
(Número del Caso): CIVDS1312719

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Paul Mankin, IV (SBN 264038), 8730 Wilshire Blvd, #310, Beverly Hills, CA 90211, 800-219-3577

DATE:
(Fecha)

OCT 18 2013

Clerk, by
(Secretario)

JENNIFER MEDINA

Deputy
(Adjunto)

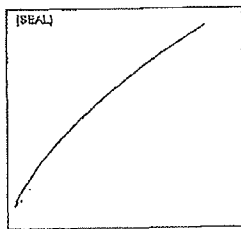
(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

Under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):



Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 (Rev. July 1, 2009)

SUMMONS

Page 1 of 1
Copy of Civil Procedure §§ 412.26, 485
www.courtinfo.ca.gov

1 Paul Mankin, IV (264038)
 2 Law Offices of Paul Mankin, IV
 3 369 S. Doheny Dr. #415
 4 Beverly Hills, CA 90211
 5 Phone: 877-206-4741
 6 Fax: 866-633-0228
 7 pmankin@paulmankin.com
 8 Attorney for Plaintiff

FILED
 SUPERIOR COURT
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

OCT 18 2013

BY Jennifer Medina
 JENNIFER MEDINA, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN BERNARDINO
 LIMITED JURISDICTION

Hearing Date 4/18/14
 at 8:30 AM Dept 536

Case No. CIVDS1312719

11 CHARLEEN SMITH,

12 Plaintiff,

13 vs.

15 MIDLAND CREDIT MANAGEMENT,
 16 INC.; and DOES 1 to 20, INCLUSIVE,

17 Defendant.

) COMPLAINT FOR VIOLATION
) OF ROSENTHAL FAIR DEBT
) COLLECTION PRACTICES ACT AND
) FEDERAL FAIR DEBT COLLECTION
) PRACTICES ACT

) (Amount not to exceed \$10,000)

-) 1. Violation of Rosenthal Fair Debt
) Collection Practices Act
) 2. Violation of Fair Debt Collection
) Practices Act

19 I. INTRODUCTION

20 1. This is an action for damages brought by an individual consumer for Defendant's
 21 violations of the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code §1788, *et seq.*
 22 (hereinafter "RFDCPA") and the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.*
 23 (hereinafter "FDCPA"), both of which prohibit debt collectors from engaging in abusive,
 24 deceptive, and unfair practices.
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II. PARTIES

2. Plaintiff, CHARLEEN SMITH ("Plaintiff"), is a natural person residing in San Bernardino County in the state of California, and is a "consumer" as defined by the FDCPA, 15 U.S.C. §1692a(3) and is a "debtor" as defined by Cal Civ Code §1788.2(h).

3. At all relevant times herein, Defendant, MIDLAND CREDIT MANAGEMENT, INC., ("Defendant") was a company engaged, by use of the mails and telephone, in the business of collecting a debt from Plaintiff which qualifies as a "debt," as defined by 15 U.S.C. §1692a(5), and a "consumer debt," as defined by Cal Civ Code §1788.2(f). Defendant regularly attempts to collect debts alleged to be due another, and therefore is a "debt collector" as defined by the FDCPA, 15 U.S.C. §1692a(6), and RFDCPA, Cal Civ Code §1788.2(c).

4. Plaintiff does not know the true names and capacities, whether corporate, partnership, associate, individual or otherwise, of Defendants sued herein as Does 1 through 20, inclusive, and therefore names said Defendants under provisions of Section 474 of the California Code of Civil Procedure

5. Plaintiff is informed and believes, and on that basis alleges that Defendants Does 1 through 20 are in some manner responsible for acts, occurrences and transactions set forth herein and are legally liable to Plaintiff.

6. At all times mentioned, each of the defendants, whether actually named or fictitiously named, was the agent of the other defendants, whether actually named or fictitiously named, and each other and was at all times acting within the purpose and scope of such agency. Plaintiff is informed and believes, and on that basis alleges, that at all times mentioned herein each defendant, whether actually or fictitiously named was the principal, agent or employee of each other defendant, and in acting as such principal, or within the course and scope of such

1 employment or agency, took some part in the acts and omissions hereinafter set forth by reason
2 of which each defendant is liable to plaintiff for the relief prayed for herein. At all times
3 relevant herein, defendants ratified the unlawful conduct of the other defendants, who were
4 acting within the scope of their agency or employment, by accepting the benefits of the
5 transaction(s) with knowledge of the wrongdoing, or otherwise by failure to repudiate the
6 misconduct.
7

8 III. FACTUAL ALLEGATIONS

9 7. At various and multiple times prior to the filing of the instant complaint,
10 including within the one year preceding the filing of this complaint, Defendant contacted
11 Plaintiff in an attempt to collect an alleged outstanding debt.
12

13 8. On or about January of 2013, Defendant began contacting Plaintiff at (760) 974-
14 9472 in connection with an attempt to collect an outstanding debt allegedly owed by Plaintiff.
15

16 9. On average, Defendant contacted Plaintiff approximately 2-3 times per day
17 calling from telephone number (800)265-8825, in connection with an attempt to collect a debt
18 allegedly owed by Plaintiff.

19 10. On several occasions, Plaintiff requested Defendant to stop contacting her.
20 However, Defendant ignored Plaintiff's request and continued to contact her.
21

22 11. Defendant contacted Plaintiff at times and places that were known to be
23 inconvenient and with such frequency as to constitute harassment under the circumstances,
24 including but not limited to, multiple calls per week.

25 12. Defendant's conduct violated the FDCPA and the RFDCPA in multiple ways,
26 including but not limited to:
27
28

1 a. Engaging in conduct the natural consequence of which is to harass,
2 oppress, or abuse Plaintiff (§ 1692d)).

3 b. Causing a telephone to ring repeatedly or continuously to annoy
4 Plaintiff (Cal Civ Code § 1788.11(d));

5 c. Communicating, by telephone or in person, with Plaintiff with
6 such frequency as to be unreasonable and to constitute an harassment to
7 Plaintiff under the circumstances (Cal Civ Code § 1788.11(e));

8 d. Causing Plaintiff's telephone to ring repeatedly or continuously
9 with intent to harass, annoy or abuse Plaintiff (§ 1692d(5));and

10 e. Communicating with Plaintiff at times or places which were
11 known or should have been known to be inconvenient for Plaintiff, (§
12 1692c(a)(1)).

13 13. As a result of the above violations of the FDCPA and RFDCPA, Plaintiff
14 suffered and continues to suffer injury to Plaintiff's feelings, personal humiliation,
15 embarrassment, mental anguish and emotional distress, and Defendant is liable to Plaintiff for
16 Plaintiff's actual damages, statutory damages, and costs and attorney's fees.

17 COUNT I: VIOLATION OF ROSENTHAL
18 FAIR DEBT COLLECTION PRACTICES ACT

19 14. Plaintiff reincorporates by reference all of the preceding paragraphs.

20 15. To the extent that Defendant's actions, counted above, violated the RFDCPA,
21 those actions were done knowingly and willfully.

22 PRAYER FOR RELIEF

23 WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendant
24 for the following:

- 25 A. Actual damages;
26 B. Statutory damages for willful and negligent violations;
27 C. Costs and reasonable attorney's fees; and
28 D. For such other and further relief as may be just and proper.

///

COUNT II: VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT

16. Plaintiff reincorporates by reference all of the preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendant
for the following:

- A. Actual damages;
- B. Statutory damages;
- C. Costs and reasonable attorney's fees; and,
- D. For such other and further relief as may be just and proper.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY

Respectfully submitted this October 14, 2013.

By: 

Paul Mankin, IV, Esq.
Law Offices of Paul Mankin, IV.
Attorney for Plaintiff

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, and address): Paul Mankin, IV, Esq. SBN 264038 Law Offices of Paul Mankin, IV 5730 Wilshire Blvd, #310 Beverly Hills, CA 90211 TELEPHONE NO.: 800-219-3577 FAX NO.: 866-633-0228 ATTORNEY FOR (Name): Plaintiff, Charleen Smith		FOR COURT USE ONLY FILED SUPERIOR COURT COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT OCT 18 2013 BY <u>Jennifer Medina</u> JENNIFER MEDINA, DEPUTY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino STREET ADDRESS: 303 W. Third St MAILING ADDRESS: Same CITY AND ZIP CODE: San Bernardino, CA 92415 BRANCH NAME: Civil Division			
CASE NAME: Charleen Smith v. Midland Credit Management, Inc.; et al.			
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"> CIVIL CASE COVER SHEET <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input checked="" type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </td> <td style="width: 50%; padding: 5px;"> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </td> </tr> </table>			CIVIL CASE COVER SHEET <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input checked="" type="checkbox"/> Limited (Amount demanded is \$25,000 or less)
CIVIL CASE COVER SHEET <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input checked="" type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
CASE NUMBER: CIVDS1312719		JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case: Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (06) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PI/PD/WD tort (36) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (08) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	--	---

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 2; RFDCPA & FDCPA
5. This case ☐ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 14, 2013

Paul Mankin, IV, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;
 Cal. Standards of Judicial Administration, ed. 3.10
 www.courtinfo.ca.gov

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	Construction Defect (10)
Other PIPD/WVD (Personal Injury/Property Damage/Wrongful Death) Tort	Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)	Claims Involving Mass Tort (40)
Asbestos (04)	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Asbestos Property Damage	Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09)	Environmental/Toxic Tort (30)
Asbestos Personal Injury/Wrongful Death	Collection Case—Seller Plaintiff	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Product Liability (not asbestos or toxic/environmental) (24)	Other Promissory Note/Collections Case	Enforcement of Judgment
Medical Malpractice (45)	Insurance Coverage (not provisionally complex) (18)	Enforcement of Judgment (20)
Medical Malpractice—Physicians & Surgeons	Auto Subrogation	Abstract of Judgment (Out of County)
Other Professional Health Care Malpractice	Other Coverage	Confession of Judgment (non-domestic relations)
Other PIPD/WVD (23)	Other Contract (37)	Slater State Judgment
Premises Liability (e.g., slip and fall)	Contractual Fraud	Administrative Agency Award (not unpaid taxes)
Intentional Bodily Injury/PD/WVD (e.g., assault, vandalism)	Other Contract Dispute	Petition/Certification of Entry of Judgment on Unpaid Taxes
Intentional Infliction of Emotional Distress	Real Property	Other Enforcement of Judgment Case
Negligent Infliction of Emotional Distress	Eminent Domain/Inverse Condemnation (14)	Miscellaneous Civil Complaint
Other PIPD/WVD	Wrongful Eviction (33)	RICO (27)
Non-PIP/WVD (Other) Tort	Other Real Property (e.g., quiet title) (26)	Other Complaint (not specified above) (42)
Business Tort/Unfair Business Practice (07)	Writ of Possession of Real Property	Declaratory Relief Only
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Mortgage Foreclosure	Injunctive Relief Only (non-harassment)
Defamation (e.g., slander, libel) (13)	Quiet Title	Mechanics Lien
Fraud (16)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Other Commercial Complaint Case (non-tort/non-complex)
Intellectual Property (19)	Unlawful Detainer	Other Civil Complaint (non-tort/non-complex)
Professional Negligence (25)	Commercial (31)	Miscellaneous Civil Petition
Legal Malpractice	Residential (32)	Partnership and Corporate Governance (21)
Other Professional Malpractice (not medical or legal)	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Other Petition (not specified above) (43)
Other Non-PIP/WVD Tort (35)	Judicial Review	Civil Harassment
Employment	Asset Forfeiture (05)	Workplace Violence
Wrongful Termination (36)	Petition Re: Arbitration Award (11)	Elder/Dependent Adult Abuse
Other Employment (15)	Writ of Mandate (02)	Election Contest
	Writ—Administrative Mandamus	Petition for Name Change
	Writ—Mandamus on Limited Court Case Matter	Petition for Relief From Late Claim
	Writ—Other Limited Court Case Review	Other Civil Petition
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	

CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Page 2 of 2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

Charleen Smith

Case No. CIVDS1312719

vs.

CERTIFICATE OF ASSIGNMENT

Midland Credit Management, Inc., et al

A civil action or proceeding presented for filing must be accompanied by this certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the San Bernardino District of the Superior Court under Rule 404 of this court for the checked reason:

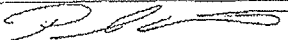
- | <input type="checkbox"/> General | | <input type="checkbox"/> Collection |
|--|--|-------------------------------------|
| Nature of Action | Ground | |
| <input type="checkbox"/> 1 Adoption | Petitioner resides within the district. | |
| <input type="checkbox"/> 2 Conservator | Petitioner or conservatee resides within the district. | |
| <input type="checkbox"/> 3 Contract | Performance in the district is expressly provided for. | |
| <input type="checkbox"/> 4 Equity | The cause of action arose within the district. | |
| <input type="checkbox"/> 5 Eminent Domain | The property is located within the district. | |
| <input type="checkbox"/> 6 Family Law | Plaintiff, defendant, petitioner or respondent resides within the district. | |
| <input type="checkbox"/> 7 Guardianship | Petitioner or ward resides within the district or has property within the district. | |
| <input type="checkbox"/> 8 Harassment | Plaintiff, defendant, petitioner or respondent resides within the district. | |
| <input type="checkbox"/> 9 Mandate | The defendant functions wholly within the district. | |
| <input type="checkbox"/> 10 Name Change | The petitioner resides within the district. | |
| <input type="checkbox"/> 11 Personal Injury | The injury occurred within the district. | |
| <input type="checkbox"/> 12 Personal Property | The property is located within the district. | |
| <input type="checkbox"/> 13 Probate | Decedent resided or resides within the district or had property within the district. | |
| <input type="checkbox"/> 14 Prohibition | The defendant functions wholly within the district. | |
| <input type="checkbox"/> 15 Review | The defendant functions wholly within the district. | |
| <input type="checkbox"/> 16 Title to Real Property | The property is located within the district. | |
| <input type="checkbox"/> 17 Transferred Action | The lower court is located within the district. | |
| <input type="checkbox"/> 18 Unlawful Detainer | The property is located within the district. | |
| <input type="checkbox"/> 19 Domestic Violence | The petitioner, defendant, plaintiff or respondent resides within the district. | |
| <input checked="" type="checkbox"/> 20 Other <u>FDCPA & FDCPA</u> | <u>Plaintiff resides within the district</u> | |
| <input type="checkbox"/> 21 THIS FILING WOULD NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT. | | |

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designated district is:

Charleen Smith	61846 Terrace Drive
(NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR)	ADDRESS
Joshua Tree	CA 92252
(CITY)	(STATE) (ZIP CODE)

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on

October 14, 2013 at Beverly Hills, California


Signature of Attorney/Party

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

SAN BERNARDINO CIVIL DIVISION
303 WEST THIRD STREET
SAN BERNARDINO, CA 92415-0210

CASE NO: CIVDS1312719

PAUL MANKIN, IV
369 S DOHENY DR #415
BEVERLY HILLS CA 90211

NOTICE OF TRIAL SETTING
CONFERENCE

IN RE: SMITH -V- MIDLAND CREDIT MANAGEMENT

Notice is hereby given that the above-entitled case has been set for Trial Setting Conference at the court located at 303 West Third Street San Bernardino, CA.

HEARING DATE: 04/18/14 at 8:30 in Dept. S36

DATE: 10/18/13

Stephen H. Nash, Clerk of the Court

By: JENNIFER MEDINA

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above listed notice:

☒ Enclosed in a sealed envelope mailed to the interested party addressed above, for collection and mailing this date, following standard Court practices.

☐ Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above, or as shown on the attached listing.

☐ A copy of this notice was given to the filing party at the counter

☐ A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file stamped documents.

Date of Mailing: 10/18/13

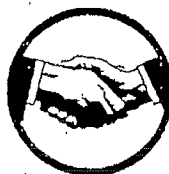
I declare under penalty of perjury that the foregoing is true and correct. Executed on 10/18/13 at San Bernardino, CA

BY: JENNIFER MEDINA

civ-ntsc-20130417

*You
Don't
Have to
Sue*

Here Are Some Other Ways



To Resolve a Civil Dispute

Presented by the
Judicial Council of California
And the
State Bar of California

Introduction

Did you know that most civil lawsuits settle without a trial?

And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?

These alternatives to a lawsuit are known as alternative dispute resolution (ADR). The most common forms of ADR are mediation, arbitration, and case evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities, through dispute resolution programs and private neutrals.

Advantages of ADR

ADR can have a number of advantages over a lawsuit.

- ADR can be speedier. A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- ADR can save money. Court costs, attorneys' fees, and expert fees can be saved.
- ADR can permit more participation. The parties may have more chances to tell their side of the story than in court and may have more control over the outcome.
- ADR can be flexible. The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.
- ADR can be cooperative. This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.
- ADR can reduce stress. There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.

- ADR can be more satisfying. For all the above reasons, many people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve a dispute, instead of filing a lawsuit. Even when a lawsuit has been filed, the court can refer the dispute to a neutral before the parties' positions harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

Disadvantages of ADR

ADR may not be suitable for every dispute.

- If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.
- There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.
- The neutral may charge a fee for his or her services.
- If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.
- Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

Three Common Types of ADR

This pamphlet describes the forms of ADR most often found in the California state courts and discusses when each may be right for a dispute.

- **MEDIATION**

In mediation, a neutral (the mediator) assists the parties in reaching a mutually acceptable resolution of their dispute. Unlike lawsuits or some other types of ADR, the mediator does not decide how the dispute is to be resolved. The parties do.

Mediation is a cooperative process, in which the parties work together toward a resolution that tries to meet everyone's interests, instead of working against each other, where at least one party loses. Mediation normally leads to better relations between the parties and to resolutions that hold up. For example, mediation has been very successful in family disputes, particularly with child custody and visitation.

Mediation is particularly effective when the parties have a continuing relationship, like neighbors or business people. Mediation also is very effective where personal feelings are getting in the way of a resolution. This is because mediation normally gives the parties a chance to let out their feelings and find out how each other sees things.

Mediation may not be a good idea when one party is unwilling to discuss a resolution or when one party has been a victim of the other or cannot have enough bargaining power in the mediation. However, mediation can be successful for victims seeking restitution from offenders. A mediator can meet with the parties separately when there has been violence between them.

- **ARBITRATION**

In arbitration, a neutral (the arbitrator) reviews evidence, hears arguments, and makes a decision (award) to resolve the dispute. This is very different from mediation, where the mediator helps the parties reach their own resolution. Arbitration normally is more informal and much speedier and less expensive than a lawsuit. Because of the large number of cases awaiting trial in many courts, a dispute normally can be heard much more quickly by an arbitrator than by a judge. Often a case that may take a week to try in court can be heard by an arbitrator in a matter of hours, because evidence can be submitted by documents (like medical reports and bills and business records), rather than testimony.

There are two kinds of arbitration in California. Private arbitration, by agreement of the parties involved in the dispute, takes place outside of the courts and normally, is binding. In most cases "binding" means that the arbitrator's decision (award) is final and there will not be a trial or an appeal of that decision. By contrast, a decision by an arbitrator in a case referred by the courts, known as "judicial arbitration," is not binding, unless parties agree to be bound. A party who does not like the award may file a request for trial with the court within a specified time. However, if that party does not do better in the trial than in arbitration, he or she may have to pay a penalty.

Arbitration is best for cases where the parties want a decision without the expense of a trial. Arbitration may be better than mediation when the parties have no relationship except for the dispute.

Arbitration may not be a good idea when the parties want to resolve their dispute by themselves, or with the aid of a neutral.

- **CASE EVALUATION**

In case evaluation, a neutral (the evaluator) gives an opinion on the strengths and weaknesses of each party's evidence and arguments, and makes an evaluation of the case. Each party gets a chance to present the case and hear the other side. This may lead to a settlement, or at least help the parties prepare to resolve the dispute later on.

Case evaluation, like mediation, can come early in the dispute and save time and money.

Case evaluation is most effective when someone has an unrealistic view of the dispute or when the only real issue is what the case is worth, or when there are technical or scientific questions to be worked out.

Case evaluation may not be a good idea when it is too soon to tell what the case is worth or when the dispute is about something besides money, like a neighbor playing loud music late at night.

Additional Information

There are several other types of ADR beside mediation, arbitration, and case evaluation. Some of these are conciliation, settlement conferences, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

The selection of a neutral is an important decision. There is no legal requirement that the neutral to be licensed or hold any particular certificate. However, some programs have established qualification requirements for neutrals. You may wish to inquire about the qualifications of any neutral you are considering.

Agreements reached through ADR normally are put in writing by the neutral and, if the parties wish, may become binding contracts that can be enforced by a judge.

You may wish to seek the advice of an attorney as to your legal rights and other matters relating to the dispute.

Whom Do You Call?

To locate a dispute resolution program or neutral in your community:

- Contact the California Department of Consumer Affairs, Consumer Information Center, toll free, 1-800-952-5210, or
- Contact the local bar association, or
- Look in the Yellow Pages under "Arbitrations" or "Mediators."

There may be a charge for services provided by private arbitrators and mediators.

Superior Court of California
County of San Bernardino



CONTRACTED MEDIATION SERVICE PROVIDERS

~~The following mediation service providers are under contract with the County of San Bernardino to provide the listed alternate dispute resolution (ADR) services under referral by the Court at no or low cost. The contractors may also provide additional mediation services outside of their contracts with the County.~~

Landlord-tenant, Unlawful Detainer, Small Claims:

Inland Fair Housing and Mediation Board
Program Director: Lynne Anderson, Executive Director
City Center Building
10681 Foothill Boulevard, Suite 101
Rancho Cucamonga, CA 91730
TEL (909) 984-2254, or (800) 321-0911
FAX (909) 460-0274
WEB www.inmedbd.com

Civil & Family Law (except custody and support):

Inland Valleys Justice Center
Program Director: Kym Adams, Executive Director
1710A Plum Ln
Redlands, CA 92374
TEL (909) 798-7117
TOLL FREE (877) 832-9325
FAX (877) 839-1926
WEB www.ivjc.org
EMAIL info@ivjc.org

Accommodations For Persons With Disabilities Using Court Facilities

The Americans with Disabilities Act (ADA) and State law require all state and local governmental entities, including the courts to provide reasonable accommodations for the needs of persons with disabilities. The ADA benefits people who have an interest in court activities, programs and services. In 1996 the Judicial Council of California, the policy-making body for the courts, adopted California Rules of Court, rule 1.00 (former rule 989.3) to implement the ADA in the state court system.

Under the ADA, State laws, and the court rule, a person is entitled to an accommodation if he or she is an "eligible person with a disability." This means the person has a physical or mental impairment that limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.

It is the individual's responsibility to contact the court to request accommodations that would best suit his or her situation. The individual may request an accommodation by completing the Request for Accommodations by Persons with Disabilities (Judicial Council Form MC-410) or by other means, and provide the request to court staff. If the individual is involved in more than one case, they must submit a separate request (MC-410 form) for each case. The individual should give the court at least five working days notice whenever possible. The court may grant, modify or deny the request. The information presented will be kept confidential unless ordered released by a Judicial officer, or a written waiver of confidentiality is received from the requestor.

The court will evaluate all requests to make reasonable modifications to its policies, practices, and procedures when these modifications are necessary to avoid discriminating against a person because of a disability.

Service animals are permitted in court facilities. The ADA defines a service animal as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. Service animals may go to all areas of the court where customers are normally allowed.

For free tools that allow persons with visual disabilities to read documents in Adobe Acrobat PDF format, please visit <http://www.adobe.com/enterprise/accessibility/main.html>. These tools convert PDF documents into either HTML or ASCII text that can be read by many screen-reading programs.

For further information and forms:

Jurors: Please contact the Jury Services Office at (909) 884-1858.

Others: Please contact the court's ADA Coordinator at sprentiss@sb-courts.org

Court employees: To request accommodation for yourself, please contact your supervisor or the Court's Personnel Department. For information on assisting court customers with Ada issues, refer to the courts Intranet site www.sb-court.org

If you should have any questions or concerns regarding Americans with Disabilities, please contact Sharon Prentiss, Director of Court Administrative Services at (909) 708-8745.

Request for Accommodation Instruction Sheet (Non Fillable Form and Rule of Court 1)
<http://www.sb-court.org/Portals/0/Documents/PDF/ADA/ADA-Persons-With-Disabilities-MC410QA.pdf>

Request for Accommodation Form Fillable Version (MC-410)
<http://www.courts.ca.gov/documents/mc410.pdf>

Q&A on Rule of Court 1.100
<http://www.sb-court.org/Portals/0/Documents/PDF/ADA/Requestsforaccommodationsbypersonswithdisabilities.pdf>
Access and Fairness Advisory Flyer
<http://www.sb-court.org/Portals/0/Documents/PDF/ADA/ProvidingDisabilityAccommodations.pdf>



CORPORATION SERVICE COMPANY®

Notice of Service of Process

null / ALL
Transmittal Number: 11775908
Date Processed: 10/29/2013

Primary Contact: Milana Ashirov
Midland Credit Management, Inc.
3111 Camino del Rio North
Suite 1300
San Diego, CA 92108

Entity:	Midland Credit Management, Inc Entity ID Number 1682419
Entity Served:	Midland Credit Management, Inc.
Title of Action:	Charleen Smith vs. Midland Credit Management, Inc.
Document(s) Type:	Summons/Complaint
Nature of Action:	Violation of State/Federal Act
Court/Agency:	San Bernardino County Superior Court, California
Case/Reference No:	CIVDS1312719
Jurisdiction Served:	California
Date Served on CSC:	10/29/2013
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Paul Mankin 800-219-3577

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

Exhibit 2

COPY

1 THOMAS F. LANDERS [SBN 207335]
tlanders@swsslaw.com

2 LEAH S. STRICKLAND [SBN 265724]
lstrickland@swsslaw.com

3 SOLOMON WARD SEIDENWURM & SMITH, LLP
401 B Street, Suite 1200
4 San Diego, California 92101
(t) 619.231.0303
5 (f) 619.231.4755

6 Attorneys for MIDLAND CREDIT
7 MANAGEMENT, INC.

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
NOV 26 2013
By Shirley C. [Signature] Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

10 CHARLEEN SMITH,

11 Plaintiff,

12 v.

13 MIDLAND CREDIT MANAGEMENT, INC.;
and DOES 1 to 20, INCLUSIVE,

14 Defendant.

Case No. CIVDS1312719

ANSWER TO PLAINTIFF'S COMPLAINT

Judge: Brian S. McCarville
Dept.: S36

Limited Civil
Complaint Amount Not to Exceed \$10,000
Action Filed: October 18, 2013

17 Defendant MIDLAND CREDIT MANAGEMENT, INC. ("Defendant") answers the
18 Complaint of plaintiff CHARLEEN SMITH ("Plaintiff") as follows:

GENERAL DENIAL

20 1. Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Defendant
21 generally and specifically denies each and every allegation set forth in the Complaint, and the
22 whole thereof, and generally and specifically denies that Plaintiff has been injured or has suffered
23 any damages in any sum whatsoever.

24 ///

25 ///

26 ///

27 ///

28 ///

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CIVDS1312719

ANSWER TO PLAINTIFF'S COMPLAINT

AFFIRMATIVE DEFENSES

As and for separate affirmative defenses to the Complaint, Defendant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. The allegations of the Complaint fail to state a claim against Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations/Laches)

2. The purported claims set forth in the Complaint are barred in whole or in part by the applicable statutes of limitation and/or the equitable doctrine of laches.

THIRD AFFIRMATIVE DEFENSE

(Unclean Hands)

3. Defendant alleges on information and belief that the allegations in the Complaint and relief requested are, on information and belief, barred in whole or in part by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

(No Willful Conduct)

4. Defendant acted in good faith at all times in its dealings with Plaintiff, and if any conduct by Defendant is found to be unlawful, which Defendant expressly denies, such conduct was not willful and should not give rise to liability.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

5. Defendant alleges on information and belief that Plaintiff, although under a legal obligation to do so, has failed to take reasonable steps to mitigate any alleged damages that she may have and is therefore barred from recovering damages, if any, from Defendant.

///

///

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-2-

CIVDS1312719

ANSWER TO PLAINTIFF'S COMPLAINT

SIXTH AFFIRMATIVE DEFENSE

(Waiver)

6. Defendant alleges on information and belief that Plaintiff has waived her rights, if any, to recover the relief she seeks in the Complaint based upon her own conduct and admissions with respect to the financial obligation at issue.

SEVENTH AFFIRMATIVE DEFENSE

(Good Faith)

7. Defendant has, at all material times with respect to Plaintiff, acted in good faith in an effort to comply fully with all relevant federal and state laws.

EIGHTH AFFIRMATIVE DEFENSE

(Apportionment)

8. Without admitting that any damages exist, if damages were suffered by Plaintiff as alleged in the Complaint, those damages were proximately caused by and contributed by persons other than Defendant. The liability, if any exists, of all defendants and/or any responsible parties, named or unnamed, should be apportioned according to their relative degrees of fault, and the liability of this Defendant should be reduced accordingly.

NINTH AFFIRMATIVE DEFENSE

(Supervening Cause)

9. The causes of action in the Complaint are barred, in whole or in part, to the extent that any injury or loss sustained was caused by intervening or supervening events over which Defendant had or has no control.

TENTH AFFIRMATIVE DEFENSE

(Equitable Indemnity)

10. To the extent that Plaintiff has suffered any damage as a result of any alleged act or omission of Defendant, which Defendant denies, Defendant is entitled to equitable indemnity according to comparative fault from other persons and/or entities causing or contributing to such damages, if any.

///

ELEVENTH AFFIRMATIVE DEFENSE

(Litigation Privilege)

11. The actions of Defendant complained of in the Complaint constitute communications that were made in good faith and in anticipation of or in connection with ongoing litigation and Plaintiff's claim is therefore barred, in whole or in part, by the California litigation privilege.

TWELFTH AFFIRMATIVE DEFENSE

(First Amendment)

12. Defendant's conduct is protected under the First Amendment of the United States Constitution and the California Constitution.

THIRTEEN AFFIRMATIVE DEFENSE

(Privilege)

13. Defendant alleges that any of its actions and/or communications, if any, whether written or oral, were privileged pursuant to California Civil Code § 47, § 1785.32, 15 U.S.C. § 1692k(d), the common law; and that the use of the process that Plaintiff claims were abused was a publication made in the course of judicial or similar proceedings and were absolutely privileged under California Civil Code § 47(b).

FOURTEENTH AFFIRMATIVE DEFENSE

(Conduct of Others)

14. Plaintiff's damages, if any, were caused by the actions or inactions of others over whom this answering Defendant had no control.

FIFTEENTH AFFIRMATIVE DEFENSE

(Prior Express Consent)

15. Defendant alleges on information and belief that if it made any telephone calls to Plaintiff it did so with prior express consent.

///

///

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-4-

CIVDS1312719

ANSWER TO PLAINTIFF'S COMPLAINT

SIXTEENTH AFFIRMATIVE DEFENSE

(Preventative Measures)

16. Defendant alleges on information and belief that it has established and implemented appropriate procedures to prevent violation of the Telephone Consumer Protection Act.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Right to Amend)

17. Defendant reserves the right to amend this Answer to allege additional affirmative defenses.

PRAYER

WHEREFORE, Defendant MIDLAND CREDIT MANAGEMENT, INC. requests judgment as follows:

1. That Plaintiff takes nothing by way of her Complaint, which should be dismissed with prejudice;
2. That Defendant recover from Plaintiff its costs according to proof;
3. That Defendant recover its attorneys' fees according to proof; and
4. That the Court orders such other further reasonable relief as the Court may deem just and proper.

DATED: November 26, 2013

SOLOMON WARD SEIDENWURM & SMITH, LLP

By: 

THOMAS E. LANDERS
LEAH S. STRICKLAND
Attorneys for MIDLAND CREDIT
MANAGEMENT, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 401 B Street, Suite 1200, San Diego, CA 92101.

On November 26, 2013, I served true copies of the following document(s) described as **ANSWER TO PLAINTIFF'S COMPLAINT** on the interested parties in this action as follows:

Paul Mankin, IV, Esq.	Attorney for Plaintiff
Law Offices of Paul Mankin, IV	CHARLEEN SMITH
369 S. Doheny Drive, #415	
Beverly Hills, CA 90211	


Paul Mankin, IV, Esq.
8730 Wilshire Blvd., Suite 310
Beverly Hills, CA 90211

T: 877-206-4741
F: 866-633-0228
pmankin@paulmankin.com

BY MAIL: I enclosed the document(s) in sealed envelope(s) or package(s) addressed to the person(s) at the address(es) listed above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with Solomon Ward Seidenwurm & Smith, LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 26, 2013, at San Diego, California.


Pamela Blanton

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself ☐)
CHARLEEN SMITH

DEFENDANTS (Check box if you are representing yourself ☐)
MIDLAND CREDIT MANAGEMENT, INC.

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)
Paul Mankin, IV [SBN 264038]
LAW OFFICES OF PAUL MANKIN, IV
369 S. Doheny Dr., #415, Beverly Hills, CA 90211
Tel: (877) 206-4741; Fax: (866) 633-0228

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)
Thomas F. Landers [SBN 207335]/Leah S. Strickland [SBN 265724]
SOLOMON WARD SEIDENWURM & SMITH, LLP
401 B Street, Ste 1200, San Diego, CA 92101
Tel: (619) 231-0303; Fax: (619) 231-4755

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☒ 3. Federal Question (U.S. Government Not a Party)
- ☐ 2. U.S. Government Defendant
- ☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☐ 1. Original Proceeding ☒ 2. Removed from State Court ☐ 3. Remanded from Appellate Court ☐ 4. Reinstated or Reopened ☐ 5. Transferred from Another District (Specify) ☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$ Not specified

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
15 U.S.C. section 1692 et seq. Plaintiff alleges violations of the federal and state Fair Debt Collection Practices Acts.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY/CONTRACT	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/Etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 American with Disabilities-Employment <input type="checkbox"/> 446 American with Disabilities-Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee Conditions of Confinement FORFEITURE/PENALTY: <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY: <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405 (g)) FEDERAL TAX SUITS: <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Thrd Party 26 USC 7609

FOR OFFICE USE ONLY:

Case Number

ED CV 13 - 02186 JGB

SPx

COPY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input checked="" type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF? Then check the box below for the county in which the majority of DEFENDANTS reside.	A DEFENDANT? Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
	<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western

Question C: Location of plaintiffs, defendants, and claims?	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	C.2. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column D <input checked="" type="checkbox"/> only 1 answer in Column D and no answers in Column C Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Eastern

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed?

☒ NO☐ YES

If yes, list case number(s): _____

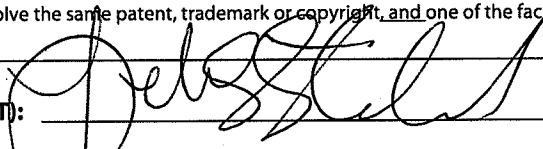
IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case?

☒ NO☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY
(OR SELF-REPRESENTED LITIGANT):

DATE: November 27, 2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Jesus G. Bernal and the assigned Magistrate Judge is Sheri Pym.

The case number on all documents filed with the Court should read as follows:

5:13-cv-02186 JGB-SPx

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

November 27, 2013

Date

By M. MEAD
Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

☐ Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

☒ Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.